

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID DAVIDOW and SHERYL DE
MERS, domestic partners,

Plaintiffs,

v.

ZALNATRAV, INC., a Washington
corporation; RAVENARK, a Washington
sole proprietorship; TRAVIS B. BRANDT
and JANE DOE BRANDT, husband and
wife, and the marital community
composed thereof,

Defendants.

Case No. 2:22-cv-01594-RAJ

ORDER

THIS MATTER comes before the Court on Plaintiffs' request to supplement this Court's Judgment, Dkt. # 173, filed in response to this Court's order that Plaintiffs provide an accounting of post-judgment interest, damages, and attorney's fees arising out of RCW 19.86.090, and reasonable attorney's fees and costs. Dkt. # 174.

1 Previously, this Court granted Plaintiffs' motion for summary judgment as to their
2 fraud, breach of contract, conversion, and Washington Consumer Protection Act (WCPA)
3 claims against Defendants and dismissal of Defendants' counterclaims for fraud, breach
4 of contract, and malicious prosecution. Dkt. # 159. This Court granted Plaintiffs' request
5 for the imposition of a constructive trust upon the Vessel at issue, its associated engines,
6 and items purchased with funds paid by Plaintiffs to Defendants. *Id.* Plaintiffs then
7 moved for entry of a final judgment and to dismiss their outstanding civil RICO claim.
8 Dkt. # 160. The parties appeared for a telephonic hearing on Plaintiffs' motion, Dkt. #
9 168, and this Court entered judgment for Plaintiffs in the amount of \$74,398 and awarded
10 pre-judgment interest in the amount of \$20,767.45. Dkt. ## 169, 173. This Court ordered
11 Plaintiffs to supplement their motion for entry of final judgment with a further accounting
12 of attorney's fees and costs associated with this litigation and damages under the WCPA.
13 Dkt. # 174.

14 Plaintiffs now seek to supplement the judgment and seek attorney's fees in the
15 amount of \$132,909.50, expert witness fees in the amount of \$15,993.62, and legal costs
16 of \$11,124.95. Dkt. # 175. Further, Plaintiffs seek WCPA treble damages in the statutory
17 maximum amount of \$25,000 and request that post-judgment interest be calculated at a
18 rate of 10.5% as provided for in RCW 4.56.110(3).

19 Fed. R. Civ. P. 54(d)(1) provides: "Unless a federal statute, these rules, or other
20 court order provides otherwise, costs-other than attorney's fees-should be allowed to the
21 prevailing party." *See also Draper v. Rosario*, 836 F.3d 1072, 1087 (9th Cir. 2016).
22 Further, the WCPA allows successful plaintiffs to "recover the actual damages sustained
23 by him or her, or both, together with the costs of the suit, including a reasonable
24 attorney's fee." RCW 19.86.090; *see also Frias v. Asset Foreclosure Servs., Inc.*, 181
25 Wn.2d 412, 432, 334 P.3d 529 (2014). "In computing, for purposes of the CPA, a
26 reasonable amount of attorney's fees...the Court is charged with making 'an independent

1 decision' as to what represents a reasonable amount of attorney's fees." *Straitshot*
2 *Commc 'ns, Inc. v. Telekenex, Inc.*, No. C10-268-TZ, 2012 WL 5880293, at *6 (W.D.
3 Wash. Nov. 20, 2012) (citing *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 744
4 (1987)).

5 Having reviewed Plaintiffs' counsel's billing records, this Court finds counsel's
6 hourly rates and the amount of hours billed to be reasonable. *Ingram v. Oroudjian*, 796
7 F.2d 1205, 1240-11 (9th Cir. 1986) (district courts are justified in relying on their own
8 knowledge and familiarity with the legal market in setting a reasonable hourly rate).
9 Here, counsel's hourly rates are at or below prevailing rates in the area, and the fees were
10 heavily discounted. *United Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d
11 403, 407 (9th Cir. 1990) (affidavits of the plaintiffs' attorney are satisfactory evidence of
12 the prevailing market rate); *see also* Dkt. # 176 (Declaration of Katie Smith Providing
13 Accounting of Litigation Costs and Attorneys Fees Consistent with Dkt. # 174). The
14 Court notes that Plaintiffs were required to respond to voluminous non-meritorious
15 motions filed by Defendants throughout this matter and seek court intervention by filing
16 motions to compel discovery production and the completion of Defendant's deposition at
17 various junctures. *See* Dkt. ## 86, 111. This undoubtedly drove up the costs of this
18 litigation. Plaintiffs additionally incurred expert witness costs in retaining naval architect
19 Craig Sylvester to assess the construction of the incomplete Vessel, Freddie Rosado to
20 appraise the value of the Vessel hull and its associated engines, and CPA Steve Roberts
21 to analyze the financial and accounting records maintained by Defendants. Each report
22 was utilized in support of Plaintiffs' successful WCPA, fraud, conversion, and breach of
23 contract claims. *See* Dkt. # 125, Exs. G, H, I. As such, the Court finds it appropriate to
24 award attorney's fees and costs incurred by Plaintiffs in the course of this litigation. *See*
25 *Peoples v. United Serv. Auto. Ass'n*, 194 Wn.2d 771, 782, 452 P.3d 1218 (2019) (*en*
26 *banc*) (expenses incurred to investigate a deceptive act or practice are cognizable injuries

1 and damages under the WCPA); *see also Ethridge v. Hwang*, 105 Wn.App. 447, 461, 20
2 P.3d 958 (2001) (court not required to artificially segregate time in a case where all
3 claims relate to the same fact pattern, but allege different bases for recovery).

4 The WCPA also provides for damages, and the court may, in its discretion,
5 “increase the award of damages up to an amount not to exceed three times the actual
6 damages sustained,” provided that the amount not exceed \$25,000. RCW 19.86.090.
7 Here, this Court has previously entered a judgment for damages in the amount of
8 \$74,398. Although Defendants’ actions have injured Plaintiffs, and a WCPA claim
9 requires a plaintiff to establish that a defendant’s practices “have the potential to affect
10 the public interest,” *Indoor Billboard/Wash., Inc. v. Integra Telcom of Wash., Inc.*, 162
11 Wn.2d 59, 73 170 P.3d 10 (2007) (*en banc*), Plaintiffs have not established that
12 Defendants’ actions impacted particularly large numbers of consumers or involved a
13 large number of statutory violations. *Compare* Dkt. # 159 at 16-19 (discussing Plaintiffs’
14 WCPA claim) *with Matheny v. Unumprovident Corp.*, 594 F.Supp.2d 1212, 1225-26
15 (E.D. Wash. 2009) (finding that treble damages in the statutory maximum amount were
16 appropriate where solicitation and dissemination of materials were part of an “ongoing
17 course of conduct affecting thousands of consumers”) *and In re Bryce*, 491 F.R. 157, 186
18 (W.D. Wash. 2013) (awarding maximum treble damages “due to the number and extent
19 of both federal and state statutory violations present” in the case). Therefore, the Court
20 declines to increase the damages award beyond the judgment already entered in favor of
21 Plaintiffs.

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1 The Court therefore ORDERS that, in addition to the judgment amounts entered
2 on February 16, 2024, judgment is entered in favor of Plaintiffs David Davidow and
3 Sheryl De Mers against Defendants Travis Brandt, Zalnatrav, Inc., and Ravenark as
4 follows:

- 5 1. Attorney's fees and costs in the amount \$160,028.07; and
- 6 2. A post-judgment interest rate of 10.5%.

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8 DATED this 28th day of May, 2024.

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12 The Honorable Richard A. Jones
13 United States District Judge
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